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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 249.

WYATT TEE WALKER, MARTIN LUTHER KING, JR., RALPH ABERNATHY,
A. D. KING, J. W. HAYES, T. L. FISHER, F. L. SHUTTLESWORTH
and J. T. PORTER,
Petitioners,

VS.

CITY OF BIRMINGHAM, a Municipal Corporation of the
State of Alabama,
Respondent.

On Writ of Certiorari to the Supreme Court of Alabama.

SUPPLEMENTAL BRIEF FOR RESPONDENT.

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With leave of the Court, this supplemental brief is filed, addressed to the point argued on behalf of petitioners that the Alabama Supreme Court, in the case of **Fields v. City of Fairfield**, 273 Ala. 588, 143 So. (2d) 177, in the

use of the expression, "This argument is based upon the principle that the ordinance of the City of Fairfield is unconstitutional. We cannot say that it is unconstitutional on its face", intended to depart from the doctrine that the constitutionality of an ordinance cannot be raised in a collateral contempt proceeding for the violation of an injunction based upon such allegedly unconstitutional ordinance, but must necessarily be raised by proper proceeding in the main injunction suit. It will be observed that the only comment concerning the constitutionality of the ordinance is that above quoted. From then on the opinion deals exclusively with the elaboration of the rule that an injunction cannot be disobeyed with immunity from criminal contempt penalty unless the order disobeyed was void. Numerous cases are cited by the Alabama Supreme Court to this effect. These cases include **United States v. United Mine Workers of America**, 330 U. S. 258, 67 S. Ct. 677; **Howat v. Kansas**, 258 U. S. 181, 42 S. Ct. 277, 66 L. Ed. 550; **People v. Bouchard**, 6 Misc. 459, 27 N. Y. S. 201; **McLeod v. Majors**, 5th Cir., 102 F. 2d 128; **Pure Milk Ass'n v. Wagner**, 363 Ill. 316, 2 N. E. 2d 288. The opinion then quotes at length from the **United Mine Workers** case.

The closing sentence of the opinion is "Under these authorities, petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings."

When the **Fields** case was pending before this Honorable Court an amicus brief was filed on behalf of the NAACP Legal Defense and Educational Fund, Inc., counsel for which is Mr. Jack Greenberg and Mr. James M. Nabrit, III, whose names are signed to such brief, together with Shirley Fingerhood, Of Counsel. We find in this brief no contention that the Supreme Court of Alabama in the **Fields** case had undertaken an authorita-

tive decision on the constitutionality of the City of Fairfield ordinance in question, but obviously it was assumed that the holding of the Alabama Court was rested upon the United Mine Workers case. On page 7 of the brief, the following language is used:

“As authority for its position that the question of constitutionality of a judicial order may not be adjudicated on an appeal from a judgment of conviction for contempt, the court below relied on United States v. United Mine Workers of America, 330 U. S. 258.”

It is also of interest that the Solicitor General filed an amicus brief in the **Fields** case. This brief also assumes that the Supreme Court of Alabama did not authoritatively deal with the question of the constitutionality of the ordinance in question. On page 11 of his amicus brief, we find the following:

“On the question of the constitutionality of the ordinance requiring a permit for the conduct of a public meeting, the court remarked, ‘(w)e cannot say that it is unconstitutional on its face’ (R. 88), but held that, in any event, the validity of the ordinance could not be tested by disobedience of the restraining order. It concluded that ‘petitioners were guilty of contempt, as they chose to disregard the temporary injunction rather than contesting it by orderly and proper proceedings’ (R. 90).”

A consideration of the two briefs above mentioned leads to the clear conclusion that both the Solicitor General and Counsel for petitioners were, at the time that the **Fields** case was pending in this Honorable Court, of the opinion that the Supreme Court of Alabama relied upon **United Mine Workers** case and did not establish a rule of law in Alabama permitting the constitutionality of an

ordinance to be tested in a collateral contempt proceeding.

In the instant case, the Supreme Court of Alabama adhered to its previous rulings to the effect that the only issue, absent any question of procedural defects, was to determine the jurisdiction of the Court as an Equity Court to issue an injunction and the jurisdiction of such Court over the parties involved and the question of whether or not the injunction was violated. In this regard the Supreme Court of Alabama said in effect the injunction had been violated in the Friday and Sunday parades, the first of which was apparently scheduled to proceed over major public streets for about one-half mile to City Hall (R. 146, top of page); and as to the second, police officials had been informed the Sunday parade was to traverse and cross major arteries for about two miles to City Jail (R. 149, middle of page). The point was made that these parades were made without a permit as required by the ordinance and in defiance and in violation of the restraining order, without prior effort being made by petitioners to dissolve or discharge it. We quote the following from the Alabama Supreme Court decision:

“It is to be remembered that petitioners are charged with violating a temporary injunction. We are not reviewing a denial of a motion to dissolve or discharge a temporary (fol. 516) injunction. Petitioners did not file any motion to vacate the temporary injunction until after the Friday and Sunday parades. Instead, petitioners deliberately defied the order of the court and did engage in and incite others to engage in mass street parades without a permit” (R. 440).

The Alabama Supreme Court relied upon the rule of *Howat v. Kansas*, and *United States v. United Mine Workers*, and quoted at great length from the latter case.

We respectfully submit the Alabama Court has, without exception, followed the Mine Workers doctrine from the time it was pronounced in 1947, as it did in the instant case.

Respectfully submitted,

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